

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT, ABC UNIFIED SCHOOL
DISTRICT, AND CALIFORNIA
DEPARTMENT OF EDUCATION.

OAH Case No. 2015020992

ORDER GRANTING MOTION TO
DISMISS CALIFORNIA
DEPARTMENT OF EDUCATION

On February 11, 2015, Parent on behalf of Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Los Angeles Unified School District, ABC Unified School District, and the California Department of Education. On February 23, 2015, the Department of Education filed a motion requesting its dismissal from the complaint. On February 25, 2015, Student filed Opposition to the Department of Education's motion to dismiss. Los Angeles and ABC did not file opposition.

Generally, the Department of Education seeks dismissal because it typically only has supervisorial responsibility for special education programming and is not directly responsible for providing educational programming or services. The Department of Education states it never provided Student with a free appropriate public education and Student has not asserted any facts against the Department of Education that would cause the Department of Education to be responsible for providing Student with a FAPE.

In opposition, Student states that Los Angeles Unified School District and ABC Unified School District are refusing to offer Student placement in a residential treatment center because both districts take the position that Student is not a resident of their respective school district. Student argues that the Department of Education would be the agency responsible for providing Student with a FAPE if neither school district is the local educational agency. This would require an evidentiary hearing and, therefore, the motion to dismiss should be denied.

APPLICABLE LAW

The Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.) and California state law counterparts do not set forth a procedure for dismissing claims on the merits without first affording the petitioning party a chance to develop a record at hearing. The Administrative Procedures Act (Gov. Code, § 11340 et seq.) requires that parties

appearing before the OAH receive notice and an opportunity to be heard, including the opportunity to present and rebut evidence. (Gov. Code, § 11425.10, subd. (a)(1).) However, at a prehearing conference, an administrative law judge may address such matters “as shall promote the orderly and prompt conduct of the hearing” (Gov. Code, § 11511.5, subd. (b)(12)), and at hearing, an ALJ may take action “to promote due process or the orderly conduct of the Hearing.” (Cal. Code Regs., tit. 1, § 1030, subd. (e)(3).) Also, as an administrative tribunal, the OAH has jurisdiction to determine the extent of its own jurisdiction and power to act. (See *People v. Williams* (2005) 35 Cal. 4th 817, 824.)

Accordingly, OAH may dismiss a matter in its entirety, or one or more claims, where it is evident from the face of the complaint that the alleged issues fall outside of OAH jurisdiction or the pleaded facts cannot sustain a claim. Such circumstances may include, among other things, complaints that assert civil rights claims or claims seeking enforcement of a settlement agreement, or that assert claims against an entity that cannot be legally responsible for providing special education or related services under the facts alleged.

Special education due process hearing procedures extend to a student’s parent or guardian, to the student under certain conditions, and to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) The “public agency” may be “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.) Similarly, the Code of Federal Regulations provides that the term “public agency” encompasses state educational agencies such as the Department of Education, as well as local educational agencies such as Los Angeles Unified School District and ABC Unified School District, “and any other political subdivisions of the State that are responsible for providing education to children with disabilities.” (34 C.F.R. § 300.33 (2012).)

The IDEA leaves it to each state to establish mechanisms for determining which of the state’s public agencies is responsible for providing special education services to a particular student, and procedures for resolving interagency disputes concerning financial responsibility. (20 U.S.C. § 1400(d)(12)(A); *Manchester School District v. Crisman* (1st Cir. 2002) 306 F.3d 1, 10-11.) Under California law, the public agency responsible for providing education to a child between the ages of six and 18 is generally the school district in which the child’s parent or legal guardian resides (Ed. Code § 48200), although certain responsibilities, such as the provision of special education services in juvenile court schools, may be regionalized by local plans and administered by county offices of education (Ed. Code, §§ 56140; 56195; 56195.5; 56205-56208; 46845 et seq.). OAH may determine the residency of a parent or guardian in a due process proceeding and establish the public agency responsible for the student’s special education. (See *Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525; *J.S. v. Shoreline School Dist.* (W.D. Wash. 2002) 220 F.Supp.2d 1175, 1191.)

For reasons discussed below, the Department of Education’s motion to be dismissed from this matter is granted because the complaint fails to allege facts that could result in the

Department of Education being found legally responsible for providing special education or related services.

DISCUSSION

Under the IDEA, a state educational agency such as the Department of Education is responsible for “general supervision” of state special education programs to ensure, among other things, that IDEA requirements are met. (20 U.S.C. § 1400(d)(11)(A).) The Department of Education is generally not a party to due process proceedings because a local educational agency, such as a school district or county office of education, is the public agency that is responsible for providing special education services, and “involved in any decisions regarding [the] pupil.” (Ed. Code § 56501, subd. (a).) There are exceptions to this general rule.

For example, the Department of Education is the responsible public agency in due process hearings involving students attending the state schools for the deaf and for the blind that are operated by the Department of Education (Ed. Code, §§ 59002; 59102). Here, Student makes no claim of a state school’s involvement; thus, this exception is inapplicable.

The Department of Education may also be responsible for providing special education, by default, if conduct of the legislature or the Department of Education has made it impossible to identify a responsible local educational agency. (See *Orange County Department of Education v. California Department of Education* (9th Cir. 2011) 668 F.3d 1052, 1063; *Los Angeles Unified School Dist. v. Garcia* (9th Cir. 2012) 669 F.3d 956, 960 (citing *Orange County*).) Further, the Department of Education may be responsible for providing special education services where the relevant local educational agency is unable or unwilling to provide those services. (*Garcia*, at p. 960, citing 20 U.S.C. § 1413(g).) Here, these exceptions are similarly inapplicable.

In the complaint, Student alleges that the Department of Education is an appropriate party because of its supervisorial oversight of special education programs as the state educational agency and therefore has the responsibility for the general supervision and implementation of the IDEA. (20 U.S.C. § 1412(a)(11)(A); 34 C.F.R. § 300.149(a)(2006).) Student makes no other factual assertions regarding the Department of Education.

The complaint does not contain factual allegation that, if proven at hearing, would result in the Department of Education being found legally responsible to provide Student with a FAPE. Student asserts in his opposition that Los Angeles Unified School District and ABC Unified School District each claim not to be Student’s local educational agency and, therefore, refuse to provide Student with residential treatment center placement. However, Student’s complaint does not make such assertions.

Student alleges that Los Angeles Unified School District had been the local educational agency responsible for providing him a FAPE since 2011 when he was placed

with his foster Parent, who lived – and continues to live – within Los Angeles Unified School District. Los Angeles Unified School District held a number of individual educational program meetings, changing his eligibility from emotional disturbance to intellectual disability in May 2012. Los Angeles Unified School District placed Student in a number of nonpublic schools.

In March 2013, Student was admitted to College Hospital, which is located within ABC Unified School District. Initially, Student was admitted pursuant to the Welfare and Institutions Code, section 5585.50. However, Student continued to be hospitalized and ABC Unified School District held a 30-day IEP in April 2013, which provided services and placement at College Hospital. ABC Unified School District held an annual IEP in April 2014, which continued to provide services and placement at College Hospital, where he remained for the 2013-2014 school year.

Student alleges that in the fall 2014, ABC Unified School District conducted a battery of evaluations, including a Functional Behavior and Educationally Related Intensive Social Emotional Behavioral Service assessment. On January 9, 2015, ABC Unified School District convened an IEP to review the assessments. Student states that one of the recommendations of the behavior assessment was that Student be placed in a residential treatment facility, where he would receive individual counselling and case management. Student then alleges in his complaint that “Despite these recommendations, [ABC Unified School District] made no changes to the Student’s IEP.”

The complaint lists four (4) issues.¹ The first is that the respondents failed to provide a FAPE for the 2012-2013, 2013-2014, and 2014-2015 school years because Student was not provided a proper placement and services. The second issue asserts that respondents failed to develop appropriate goals and objectives that meant his unique needs. The third issue states that Los Angeles Unified School District did not provide a FAPE by failing to assess Student in all areas of suspected disability by conducting a neuropsychological assessment, a functional behavioral assessment, or a function analysis assessment. The fourth issue claims the respondents denied Student a FAPE by not offering a residential treatment center placement at the January 2015 IEP.

The complaint states that the term “respondents” includes the Department of Education. Yet, none of the factual issues involve the Department of Education because the Department of Education had never been involved in providing Student with a FAPE. Student fails to assert that ABC Unified School District claims not to be Student’s responsible local educational agency or that ABC Unified School District refuses to provide Student with a residential treatment center placement because it would not be Student’s local educational agency when he left College Hospital. Student merely alleges that ABC Unified School District should have, but did not, offer residential treatment center placement at the

¹ Student includes a fifth issue, which is actually a demand for compensatory education and is therefore a requested remedy, not a legal issue.

January 2015 IEP. Further, Student makes no assertion that Los Angeles Unified School District is the responsible local educational agency or that Los Angeles Unified School District states it would not provide a residential treatment center placement if it were the local educational agency.

Student fails to declare that ABC Unified School District is refusing to offer Student placement in a residential treatment center because they are not the local educational agency. Student does not allege how or why Los Angeles Unified School District is the local educational agency that should have made the placement offer or that Los Angeles Unified School District refused to make the offer because it was not the local educational agency.

Other than referring to the Department of Education as the responsible state educational agency, Student makes no factual assertions involving the Department of Education. The complaint does not assert that the present legal framework makes it impossible to identify the responsible public agency; thus, the second exception to the general rule is inapplicable. Further, the complaint does not state that either, much less both, Los Angeles Unified School District and ABC Unified School District have refused to acknowledge their local educational agency status; thus, the third exception to the general rule is unavailable. As such, the complaint does not assert facts that would support a finding against the Department of Education.

ORDER

1. The motion is granted and the California Department of Education is dismissed as a party in this action.
2. The matter will proceed as scheduled against the remaining parties.

DATE: March 3, 2015

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings